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SUPREME COURT, U. S.

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No. 331

In the Supreme Court of the United States

OCTOBER TERM, 1968

EUCLID NATIONAL BANK, PETITIONER

v.

THE FEDERAL HOME LOAN BANK BOARD
AND
THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
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During petitioner's existence as the Euclid Savings Association, an Ohio-chartered building and loan association, its savings accounts were insured by the Federal Savings and Loan Insurance Corporation (Insurance Corporation) under the National Housing Act (48 Stat. 1255, 12 U.S.C. 1724, *et seq.*). On November 21, 1965, Euclid Savings Association became obligated to pay an annual premium in advance to the Insurance Corporation; one-half of the premium was paid at that time, and the remainder in April 1966 (Pet. App. B(2), p. 15).

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Upon its conversion to a national bank on February 1, 1966, petitioner's savings accounts and credit obligations were insured by the Federal Deposit Insurance Corporation. Petitioner then demanded that the Insurance Corporation and the Federal Home Loan Bank Board cancel the allegedly unearned portion of the annual premium for the period February-November 1966. When its demand was refused, petitioner instituted this action for a declaratory judgment of its right to a refund (Pet. App. B(1), pp. 11–12).

The district court dismissed the complaint, on the grounds that there was no provision in the statute or the regulations for refund of premiums and that in the absence of an agreement to the contrary "the ordinary rule applies that 'an insured may not have any part of his premium returned once the risk attaches, even if it eventually turns out that the premium was in part unearned' " (Pet. App. B(1), pp. 12–14). The court of appeals affirmed (Pet. App. B(2), p. 16).

1. When petitioner sought and accepted status as an insured institution, it knew of the requirement of advance payment of annual premium charges, and it had notice that there was no statutory or regulatory provision requiring or authorizing the refund of any unearned portions of the annual premium. Nor does petitioner allege any express agreement for a refund upon a voluntary conversion from a savings and loan association to a national bank. The courts below correctly applied the settled rule that in the absence of an express agreement for refund, once the insurer

assumes the risk of loss, an insured is not entitled to the return of any part of the premium, even if it develops that the premium was in part unearned. See, *e.g.*, *Fleetwood Acres* v. *Federal Housing Administration*, 171 F. 2d 440, 442 (C.A. 2); *In re Parker-Young Co.*, 12 F. Supp. 987, 988 (D. N.H.); *Thomas* v. *Charles Baker & Co.*, 60 F. 2d 1057, 1060 (E.D. Pa.). Contrary to petitioner's contention, the application of that rule in this case does not result in double collection of premiums or any undue enrichment of the insurer, for the parties' understanding is that "the insurance granted is consideration for the entire premium received if the risk has attached by reason of the contract becoming binding on the Insurer." *Jones* v. *St. Paul Fire & Marine Insurance Co.*, 118 F. 2d 237, 238 (C.A. 5).

Petitioner asserts (Pet. 4) that the question raised here is important to all federally insured savings institutions desiring to convert to a national bank. We are advised that petitioner is the only federally insured savings and loan association to convert to national bank status since 1949. Furthermore, it would seem that any institution desiring to convert may arrange the time of its conversion so as to avoid loss of unearned premium, in the event that is a material factor in the cost of conversion.

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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